Supreme Court, U.S.
FILED
SEP 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-2033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

NINTH STREET COMMUNITY PAVING PROJECT COMMITTEE, *et al.*,
Appellants,

v.

THE CITY OF IRONTON, OHIO, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

APPELLANTS' RESPONSE TO MOTION TO DISMISS APPEAL

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September, 1986

CASILLAS PRESS INC. – 1717 K ST NW WASHINGTON DC 20006 – 223-1220

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A. The Appellees Can Point to No Instance of Adequate and Timely Notice Actually Received.

The appellees assert in their Motion to Dismiss that the appellants had at least five, and sometimes six, ways to receive notice of the assessments. The undisputed evidence at trial was that notice of planned assessments was not provided and was not received. The following facts concerning each alleged form of notice are ignored by the appellees:

1. **Community meetings.** The unrebutted evidence at trial was that of 117 appellants, only eight ever attended meetings regarding the federal block grants to be used to pay for the street improvements. R. 211, 219-220, 225, 701, 1201-1202. Those who attended a meeting who

testified stated that the discussions at these meetings focused on the use of federal block grant monies and how much work could be done with the monies received. R. 210-211, 220, 278-81, 1201-1202. The testimony of these eight appellants who attended community meetings does not support the appellees' assertion that they were apprised of the amount of assessments and potential liens to be levied on their properties or their rights to object. Appellees provided no other evidence.

2. **Local media coverage.** The appellees attempt to rely on news coverage as a substitute for the required legal notice to individual appellants. News coverage is not a substitute for notice reasonably calculated, under the circumstances, to inform individual property owners of their rights. The few appellants who were even asked, testified that they had not read any coverage. Even if appellants had read the news coverage, they would not have learned of their legal rights. The articles admitted into evidence refer to the city's receipt of federal funds to be used to pay for the street improvements. R. 1502, 1503. The articles were largely in error as to assessment amounts and provided false comfort regarding a projected assessment relief program without telling anything about official proceedings.

3. **Notices sent by the City.** The appellees allude to notices mailed in April, 1976, prior to the beginning of construction work. The appellees admitted at trial that notice was not even attempted for the vast majority of affected property owners in April. Exh. R; R. 1305-1308, 1544-1550. It is also undisputed that none of these appellants received the April notices. *Id.* When the appellees

finally attempted notice to most affected owners in September 1976, it was four months after the improvement work had begun. R. 428, 1380. In fact, the September notice was mailed on the very day the City adopted the ordinance belatedly approving the construction work to which the notices invited objections. R. 1348.

Moreover, for many of these appellants it is undisputed that no records even exist to show that notice was attempted; for others, the notices were returned undelivered by the United States Postal Service and merely filed away by appellees with no further effort at notice. Exh. R; R. 1305-1308, 1544-1550. See also Jurisdictional Statement at Appendix, p. 23a. The statutory scheme — notice to residents of the city's proposal to make certain improvements, an opportunity to be heard, and then the beginning of the improvements — was distorted in this case beyond recognition. Nowhere in appellees' motion do they assert that each of the appellants received any notice as required, much less timely notice.

4. **Newspaper notices.** The newspaper notices (published before mail notice was attempted in direct violation of the statutes) were rejected by Judge Stephenson of the County Court of Appeals in his dissent because they failed even to mention the names of the persons or a description of the properties affected. *Id.* Similar published notices have been rejected by this Court. *Mennonite Board of Missions v. Adams,* 464 U.S. 791 (1983); *Walker v. City of Hutchinson,* 352 U.S. 112 (1956); *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306 (1950).

5. **Conversations with neighbors.** Without a shred of evidence in the record to support them, appellees assert that these appellants could have learned of the im-

provements through conversations with their neighbors. Appellants could have learned many things from their neighbors. Such unsubstantiated conjectures are hardly relevant to the questions now before this Court. In fact, the only evidence of record on conversations is that certain appellants spoke with city officials and were given misinformation about assessments and told they would not have to pay. R. 159, 400-401, 1174-1175, 1201, 1213-1214.

6. **Witnessing the construction.** The fact that the construction work could have been observed by appellants failed to address the question of prior notice for assessments levied several years following completion of the construction. Moreover, such an assertion fails completely to answer the questions of how such observations of the construction by appellants who resided on side streets which were not being improved informed them that they too would be assessed. Some appellants did not even live in the city to make such observations. R. 230 (out of state property owner), 385-386 (*id.*), 1307 (out of city), 1547 (*id.*).

B. Presumed common knowledge cannot be the basis for the taking of property.

This Court has rejected the type of presumed common knowledge or constructive notice argued by appellees. Where important and substantial property rights are at issue, the Constitution of the United States requires more. Ordinary citizens cannot be presumed to glean from street construction their statutory and constitutional rights and responsibilities. Nor can they be deemed to have waived those rights under such circumstances.

For these reasons, appellees' motion to dismiss should be denied and this Court should note probable jurisdiction of appellants' appeal or grant a writ of certiorari.

Respectfully submitted,

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